IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-04-2006

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

AND

THE HONOURABLE MS.JUSTICE K.SUGUNA

APPEAL SUIT No.200 OF 1988

C.Dhanam ... Appellant/5th Defendant

-vs-

1.A.M.Srinivasan
2.C.Andiyappan
3.C.Lakshmanan
4.C.Pazhaniappan
5.C.Meenatchi ... Respondents/Plaintiff/ Defendants 1 to 4

Appeal against the judgment and decree dated 18.09.1986 made in O.S.No.936 of 1985 on the file of V Additional Subordinate Judge, Tiruchirapalli.

For appellant : Mr.P.K.Jamal Mohamed
For respondent 1 : Mr.R.Arunagirunathan
For respondent 2 : Mr.S.Abdul Samath
For respondents 3 to 5 : No appearance

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J U D G M E N T

M.KARPAGAVINAYAGAM,J.

The question referred to this Full Bench is as follows :

Whether, in respect of a chit transaction, the starting point of limitation for filing a suit is from the date of default or from the date of termination of chit period ?

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2. The short facts are as follows :

"(i) A.M.Srinivasan, plaintiff/first respondent herein, carried on chit business. One Chinnakaruppan, being a subscriber in respect of two chits, was the prized subscriber in those two chits. The two chit transactions commenced on 01.02.1982 and 20.04.1982 respectively. In respect of the first chit, the said Chinnakaruppan committed default from the date of sixth instalment, namely, 01.06.1982. In regard to the second chit, he committed default from the date of third instalment, namely, 20.06.1982. The period of 20 months for the first chit got terminated on 30.09.1983 and the second chit on 19.12.1983.

(ii) Chinnakaruppan died, possessing of property and leaving behind the legal representatives. Therefore, A.M.Srinivasan sent a notice to the legal representatives of Chinnakaruppan on the termination of the chit period on 18.10.1984, claiming the chit amount. However, the amount was not paid. Hence, the said A.M.Srinivasan, as plaintiff, filed O.S.No.936 of 1985 on 04.11.1985 against the heirs of Chinnakaruppan, as defendants, for recovery of the defaulted subscriptions, in respect of the two chit transactions.

(iii) The trial Court decreed the suit against the defendants to the extent of the assets of the deceased Chinnakaruppan in the hands of the defendants.

(iv) Fifth defendant alone has challenged the said decree and filed the present appeal in A.S.No.200 of 1988 before this Court."

3. When the matter came up before a learned single Judge of this Court for final disposal, learned counsel for the appellant, assailing the decree of the trial Court, raised the only point that the suit is not maintainable, as it is barred by limitation.

4. The learned single Judge, after hearing the counsel for the parties in this appeal, was pleased to refer the matter to a Full Bench, to decide the issue, in view of the conflicting judgments of the two Division Benches, reported in 1997 (1) CTC 471 (M.Gopal v. Sri Vetrivel Chit Funds Pvt. Ltd.) and 1999 (1) CTC 238 (Shriram Chits and Investments (P) Ltd. v. M.Krishnan).

5. As per the judgment of the Division Bench in M.Gopal v. Sri Vetrivel Chit Funds Pvt. Ltd. (1997 (1) CTC 471), Article 37 of the Limitation Act is applicable and the commencement of limitation for filing a suit against the prized subscriber would commence on the day when the last instalment was paid and the suit should be filed within three years from the date of default.

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6. On the other hand, another Division Bench, in Shriram Chits and Investments (P) Ltd. v. M.Krishnan (1999 (1) CTC 238), held that where a chit agreement is for a period of 60 months, the chit company has to wait till the end of the last instalment, as the period of limitation would commence from the date of termination of the chit period, though the prized subscriber committed default much prior to the date of termination of the chit period.

7. We have heard the learned counsel for the parties and also gone through the judgments referred to above.

8. Now, the point for determination is, which view of the said two Division Benches is correct ?

9. The first chit commenced on 01.02.1982. It was a twenty month chit. It expired on 30.09.1983. Chinnakaruppan committed default from the sixth instalment i.e., 01.06.1982. The second chit commenced on 20.04.1982. It was also a twenty month chit, which got terminated on 19.12.1983. In the second chit, Chinnakaruppan committed default from the third instalment i.e., 20.06.1982. Admittedly, notice was issued on 18.10.1984 in respect of these two chits, only after termination of the chit period.

10. In so far as the first chit transaction is concerned, if the date of default is taken as the starting point of limitation, the suit must have been filed within three years from the date of default i.e., on or before 01.06.1985, whereas it was filed on 04.11.1985, which is beyond the period of limitation. On the other hand, if the date of termination is taken as the starting point of limitation, then, the suit must have been filed on or before 30.09.1986. In this case, the suit was filed on 04.11.1985, which is within the period of limitation.

11. As indicated above, the Division Bench in M.Gopal v. Sri Vetrivel Chit Funds Pvt. Ltd. (1997 (1) CTC 471) held that Article 37 of the Limitation Act and Sections 24 and 25 of the Tamil Nadu Chit Funds Act,1961, would apply and, as such, the date of default is the reckoning date.

12. The other Division Bench in Shriram Chits and Investments (P) Ltd. v. M.Krishnan (1999 (1) CTC 238), would hold that the period of limitation starts from the date of termination of the chit period and not from the date of default.

13. The decision in M.Gopal v. Sri Vetrivel Chit Funds Pvt. Ltd. (1997 (1) CTC 471) was rendered by a Division Bench, taking into consideration the provisions of the Tamil Nadu Chit Funds Act,1961. Though the said Act has been repealed by the

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Central Act, namely, Chit Funds Act,1982, this case has to be dealt with only under the provisions of the Tamil Nadu Chit Funds Act,1961, since the chit transaction took place in the year 1982, especially before coming into force of the Central Act.

14. Before dealing with the view expressed by the Division Bench in M.Gopal v. Sri Vetrivel Chit Funds Pvt.Ltd.(1997 (1) CTC 471), let us consider the contrary view expressed by the other Division Bench in Shriram Chits and Investments (P) Ltd. v. M.Krishnan (1999 (1) CTC 238), wherein the relevant observation is as follows :

> "21. That apart, as already pointed out, the chit for a period of sixty months commenced in February 1984, and it terminated only on 10.3.1990. What was sought to be recovered is not only the defaulted instalment but also the future instalment which is payable up to March,1990. Admittedly, the claim has been presented before the Registrar on 22.7.1991. Reckoned from the last of the chit instalments payable, namely, the 60th instalment, it has to be held that it was well open to the Foreman to wait till the end of the last instalment and thereafter institute the Arbitration proceedings. Reckoned from 60th instalment which fell due on 10.3.1990, the Arbitration Petition having been presented on 22.7.1991 is not barred by limitation."

15. A perusal of the above judgment would make it clear that the view expressed by the said Division Bench is in the light of Section 65 of the Chit Funds Act,1982, which prescribes the period of limitation.

16. As indicated above, the facts of the present case are governed by the Tamil Nadu Chit Funds Act,1961, as the transaction took place in the year 1982, that too prior to the coming into force of the Chit Funds Act,1982. Thus, the contrary view expressed by the Division Bench in the above decision would not be of much help to decide the issue in question, as we are concerned with the transaction, which was completed prior to coming into force of the Chit Funds Act,1982.

17. Let us now deal with the view expressed by the Division Bench in M.Gopal v. Sri Vetrivel Chit Funds Pvt.Ltd.(1997 (1) CTC 471) :

(i) In this case, the Division Bench rendered its judgment with reference to Sections 24 and 25 of the Tamil Nadu Chit Funds Act,1961, and Article 37 of the Limitation Act.

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(ii) The question posed before the said Division Bench was, whether the limitation under Article 37 of the Limitation Act for recovery of the amount due under chit funds as per the provisions of the Tamil Nadu Chit Funds Act,1961, would commence on the date when default is committed or on the date the notice demanding the entire sum is issued as per Sub-section (2) of Section 25 of the Act ?

(iii) Dealing with the said question, the Division Bench would discuss the issue in the following manner :

> "8.Point No.1 : Chapter V of the Act deals with prized subscribers. Section 24 of the Act which falls under Chapter V provides that every prized subscriber shall pay his subscriptions regularly at the time and place and on the date mentioned in the chit agreement and on his failure to do so, he shall be liable to make a consolidated payment of all the future subscriptions at once. Section 25 (1) of the Act further provides that a foreman shall not be entitled to claim consolidated payment of all the future subscriptions at once, from a defaulting prized subscriber unless he shall have demanded the same in writing.
>
> 14.....The amount becomes due on the commission of default in payment of the instalments by the subscriber. The limitation for the suit to recover such amount commences from the date the default is committed. Article 37 governs the period of limitation. Therefore, from the date of commission of the default, the suit shall have to be filed within three years. Section 25 of the Act cannot be interpreted as having the effect of postponing the starting point of limitation. It is only an enabling provision which if availed by the foreman, he will be entitled to claim the entire amount and he can have such availment within the period of three years."

18. A perusal of the above observation would make it clear that the Division Bench, on the basis of Article 37 of the Limitation Act, held that the commencement of limitation to recover such amount is from the date the default.

19. When we refer to Sections 24 and 25 of the Tamil Nadu Chit Funds Act,1961, and Article 37 of the Limitation Act, it

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is revealed that the transaction is based upon the suit on a promissory note (emphasis supplied). Let us look into Article 37 of the Limitation Act :

Description of suit	Period of Limitation	Time from which period begins to run
On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	Three years	When the default is made, unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is no such waiver.

As such, Article 37 would refer to the promissory note or bond payable in instalments, which provides that if default is made in payment of one or more instalments, the whole shall be due (emphasis supplied).

20. A reading of the plaint filed in this case by the plaintiff would indicate that the suit has been filed not on the basis of the promissory note or bond, but on the basis of the termination of the period of chit transaction. The relevant para in the plaint is '16', which reads as follows :

> "16.The suit is not barred by time. The foreman is entitled to claim the chit amounts due after notice in writing. Chits were terminated on 30.09.1983 and 19.12.1983. Notice was issued for payment of the chit amounts due on 18.10.84. Three years have not elapsed from the termination of the chits and notice of demands. Hence, the suit is in time."

21. As per the plaint, the cause of action arose in the following circumstances :

> "18. The cause of action for the suit arose on and from 1.2.1982 and 20.4.82 the dates of commencement of the chit groups, on and from 1.6.82 the date of default, on and from 30.9.83 and 19.12.83 the dates of termination of the chit groups and on and from 18.10.84 when a demand was made for payment of amount due under the chits and on and from 27.10.84 and 5.12.84 the dates of repudiation to pay all at Trichy within the jurisdiction of

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this Hon'ble Court."

22. A reading of the above paragraphs and also the other contents of the plaint would clearly indicate that the suit has not been filed either on a promissory note or on any bond, as provided under Article 37 of the Limitation Act.

23. Section 25 (1) of the Tamil Nadu Chit Funds Act,1961, would provide that a foreman shall not be entitled to claim consolidated payment of all the future subscriptions from a defaulting prized subscriber unless he shall have demanded the same in writing. Therefore, Section 25 of the Act is not applicable to this case.

24. The Division Bench, in M.Gopal v. Sri Vetrivel Chit Funds Pvt. Ltd. (1997 (1) CTC 471), gave the above finding, only referring to Section 25 of the Act and Article 37 of the Limitation Act, which would relate to a bond or promissory note in respect of the arrears of the chit amount. As such, the said decision cannot be said to be an authority, to hold that Article 37 would apply to the claim for the chit amount.

25. As stated supra, as per the plaint, the suit claim is for recovery of subscription, due at the termination of the chit period. There is no period of limitation, as contained in the Tamil Nadu Chit Funds Act,1961, nor is there any specific Article in the Limitation Act in respect of chit transaction. As indicated above, the present suit has been filed not on the basis of a promissory note or bond, but only claiming the chit amount, after termination of the chit period. The cause of action for the suit as mentioned in the plaint is the conclusion of the chit period and the subscription is payable as on the said date. In the absence of any provision relating to limitation in the Tamil Nadu Chit Funds Act,1961, or the Limitation Act in respect of a chit transaction, Article 113 of the Limitation Act alone would be applicable. Article 113 of the Limitation Act reads as follows :

Description of application	Period of Limitation	Time from which period begins to run
Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

26. In this case, the right to sue accrues only when the period of termination is over and, as such, the suit was filed well within the time.

27. In this context, it would be worthwhile to refer to the judgment of the Supreme Court, which dealt with a similar

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question, wherein the nature of a chit transaction came up for consideration in M/s.Shriram Chits & Investment (P) Ltd. v. Union of India (A.I.R.1993 SUPREME COURT 2063). In the said case, the Supreme Court, after considering various judgments of Madras High Court, Kerala High Court and Andhra Pradesh High Court, came to the conclusion that having regard to the nature of a chit agreement, it did not create a debtor-creditor relationship and there was no promise to repay an existing debt, but to pay in discharge of a contractual obligation. The relevant observation of the Supreme Court is as given below :

> "13. Section 6 provides that the agreement shall be signed by each of the subscribers or by any person authorised by him in writing and the foreman and attested by at least two witnesses and the particulars that has to be stated in the said agreement have also been provided in S.6 of the Act. This clearly shows that a contract has to be entered into between the subscribers and the foreman and in view of the definitions provided in Ss.2(b),2(c),2(d),2 (e) and 2(j) enforceable contract comes into existence and the Act provides how the contract has to be implemented and acted upon by the parties to the contract. Therefore, it is a special form of contract contemplated by Entry 7 of List III of VIIth Schedule of the Constitution of India and it cannot be termed as money lending business. It is clear that the foreman does not lend his money to any of the subscribers. The foreman acts only as person to bring together the subscribers and certain obligations are cast upon him with a view to protect the subscribers from the mischief and fraud committed by the foreman in view of his position. The amounts are paid to the subscribers as per the chit and in accordance with the provisions of Act. It will not be correct to state that each subscriber lends money to the person who gets chit earlier. It cannot also be construed that the person who gets chit later should be treated as the money lender. The agreement between the parties that is entered as per S.6 of the Act, only provides for distribution of the chit amount. This agreement has to be treated as contract between the subscribers and the foreman and it is the foreman who brings the subscribers together and therefore, the Act provided for payment of commission for the services rendered by the foreman as he does not

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lend money belonging to him...."

28. The above observation would make it clear that on entering into the chit agreement, a debt is not incurred by the subscriber for the amount of all the future instalments and, in respect of such amount, there is no debtor-creditor relationship. The chit agreement only embodies a promise to pay on future dates. That is not a promise to repay an existing debt, but to pay in discharge of a contractual obligation. The chit fund transaction is not a case of borrowing at all and it is entirely different from a loan transaction. A loan envisages the relationship of a creditor and a debtor, in so far as the lender and the borrower are concerned. There cannot be the relationship of a creditor and debtor between the stake holder and a subscriber, in a chit fund transaction. If the stake holder advances any amount, he advances only to one of the members, the funds of the whole body of the chit fund, as the funds belong to the whole lot of subscribers, the members, borrower is as much a creditor as a debtor. The amounts are in deposit with the stake holder only as a trustee for the benefit of the members of the fund.

29. The above view expressed by the Supreme Court has been correctly followed by this Court earlier in Tuticorin Trading and Credit Corporation Pvt. Ltd. v. Sundararaj, J.S. (1998 (III) CTC 685). Therefore, the following would give the exact answer to the question posed before this Court :

Answer :

The point of limitation for filing a suit in a chit transaction starts from the date of termination of chit period and not from the date of default.

30. In the light of the above answer to the question, the suit, in the present case, is not barred by limitation. Hence, the decree passed by the trial Court, holding that the suit is filed within time, is perfectly justified. As such, the Appeal Suit is dismissed. No costs.

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To

1. The V Additional Subordinate Judge,
Tiruchirapalli.

2. The District Collector
Tiruchirapalli.

3. The District Collector,
Madras (for collecting Court Fee)

4. The Record Keeper,
VR Section,
High Court, Madras.

1 cc to M/s.Hajee P.K.Jamal Mohamed, Advocate, SR.17541
1 cc to Mr.R.Arunagirunathan, Advocate, SR.17957

mrd (co)

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